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17 Counsel for Plaintiff

18 UNITED STATES DISTRICT COURT
19 DISTRICT OF NEVADA

20 CIRENA TORRES, on behalf of
21 herself and all others similarly
22 situated,

23 Plaintiff,

24 v.

25 KWONG YET LUNG CO., INC.
26 (d/b/a International Marketplace), and
27 DOES 1 through 100, inclusive,

28 Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY DEMAND

[15 U.S.C. §§ 1681 *et seq.*]

¹ Counsel will comply with LR IA 10-2 within 45 days.

1 Plaintiff, by her counsel of record, brings this action on her own behalf and
2 on behalf of all others similarly situated, and alleges the following upon personal
3 knowledge, or where there is not personal knowledge, upon information and
4 belief:

5
6 **JURISDICTION AND VENUE**

7 1. This Court has federal question jurisdiction pursuant to 28 U.S.C. §
8 1331 and 15 U.S.C. § 1681p.

9 2. Plaintiff's claims asserted herein arose in this judicial district and all
10 Defendants do business in and reside in this judicial district.

11 3. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)
12 and (c) in that defendant KWONG YET LUNG CO., INC. (d/b/a International
13 Marketplace), has done and continues to do business, and intentionally avails
14 itself of the markets within this district, including Clark County, Nevada, it owns,
15 manages, maintains and or operates at least one physical retail store within this
16 district, and this is a class action case in which a substantial part of the acts and
17 omissions giving rise to the claims occurred within this judicial district, including
18 Las Vegas, Nevada.

19
20 **INTRODUCTION**

21 4. In 2003, Congress passed and the President signed, the Fair and
22 Accurate Credit Transactions Act ("FACTA") to assist in the prevention of
23 identity theft and credit and debit card fraud. In the statement provided by the
24 President during the signing of the bill, the President declared that:

25 "This bill also confronts the problem of identity theft. A growing
26 number of Americans are victimized by criminals who assume their
27 identities and cause havoc in their financial affairs. With this
28

1 legislation, the Federal Government is protecting our citizens by
2 taking the offensive against identity theft."

3 5. A main provision of FACTA (codified as 15 U.S.C. § 1681c(g) of
4 the Fair Credit Reporting Act), provides that:

5 "no person that accepts credit cards or debit cards for the
6 transaction of business **shall print more than the last 5 digits of**
7 **the card number or the expiration date upon any receipt**
8 **provided to the cardholder** at the point of the sale or transaction."

9 6. The law gave merchants who accept credit and or debit cards up to
10 three years to comply with its requirements, requiring full compliance with its
11 provisions no later than December 4, 2006. Although KWONG YET LUNG CO.,
12 INC. (d/b/a International Marketplace), and the other defendants herein had up
13 to three years to comply, Defendants have willfully violated this law and failed
14 to protect Plaintiff and others similarly situated against identity theft and credit
15 and debit card fraud by printing more than the last 5 digits of the card number, the
16 expiration date of the card, the brand of the card (i.e., Visa, etc.), and the name
17 of the cardholder on receipts provided to debit card and credit card cardholders
18 transacting business with Defendants.

19 7. This is a direct violation of FACTA. As the Ninth Circuit has
20 explained: "In fashioning FACTA, Congress aimed to 'restrict the amount of
21 information available to identity thieves.' 149 Cong. Rec. 26,891 (2003)
22 (statement of Sen. Shelby)." *Bateman v. American Multi-Cinema, Inc.*, 623 F.3d
23 708, 718 (9th Cir. 2010).

24 8. Plaintiff on behalf of herself and all others similarly situated brings
25 this action against KWONG YET LUNG CO., INC. (d/b/a International
26 Marketplace), and DOES 1 through 100 (collectively referred to as "Defendants")
27 based on Defendants' violations of 15 U.S.C. §§ 1681 *et seq.*
28

CLASS ACTION ALLEGATIONS

14. Plaintiff brings this class action on behalf of herself and all other persons similarly situated pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure.

15. The class which Plaintiff seeks to represent is defined as:
All consumers to whom Defendants, within two years from the date of filing this action, provided an electronically printed receipt at the point of a sale or transaction at any of Defendants' stores, on which receipt Defendants printed more than the last 5 digits of the credit card or debit card number and/or the expiration date of the consumer's credit card or debit card (the "CLASS").

16. Excluded from the CLASS are Defendants and their directors, officers and employees.

17. Numerosity (Fed. R. Civ. P. 23(a)(1)): The CLASS is so numerous that joinder of all individual members in one action would be impracticable. The disposition of their claims through this class action will benefit both the parties and this Court.

18. Plaintiff is informed and believes and thereon alleges that there are, at a minimum, thousands (*i.e.*, two thousand or more) of members that comprise the CLASS.

19. The exact size of the CLASS and identities of individual members thereof are ascertainable through Defendants' records, including but not limited to Defendants' sales and transaction records.

20. Members of the CLASS may be notified of the pendency of this action by techniques and forms commonly used in class actions, such as by published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by other methods suitable to this class and deemed necessary and or

1 appropriate by the Court.

2 21. Typicality (Fed. R. Civ. P. 23(a)(3)): Plaintiff's claims are typical of
3 the claims of the entire CLASS. The claims of Plaintiff and members of the
4 CLASS are based on the same legal theories and arise from the same unlawful
5 conduct.

6 22. Plaintiff and members of the CLASS were each customers of
7 Defendants, each having made a purchase or transacted other business with
8 Defendants within two years from the date of filing this action, using a credit and
9 or debit card. At the point of such sale or transaction with Plaintiff and members
10 of the CLASS, Defendants provided to Plaintiff and each member of the CLASS
11 a receipt in violation of 15 U.S.C. §1681c(g) (*i.e.*, a receipt on which is printed
12 more than the last 5 digits of the credit card or debit card number and/or the
13 expiration date of the credit card or debit card).

14 23. Common Questions of Fact and Law (Fed. R. Civ. P. 23(a)(2) and
15 (b)(3)): There are a well-defined community of interest and common questions
16 of fact and law affecting the members of the CLASS.

17 24. The questions of fact and law common to the CLASS predominate
18 over questions which may affect individual members and include the following:

19 (a) Whether Defendants' conduct of providing Plaintiff and the
20 CLASS with sales or transaction receipts whereon Defendants printed more than
21 the last 5 digits of the card number and/or the expiration date of the card violated
22 the FACTA, 15 U.S.C. §§ 1681 *et seq.*;

23 (b) Whether Defendants' conduct was willful; and

24 (c) Whether Plaintiff and the CLASS are entitled to statutory
25 damages, punitive damages, costs and or attorney fees for Defendants' acts and
26 conduct.

27 25. Adequacy of Representation (Fed. R. Civ. P. 23(a)(4)): Plaintiff is
28

1 an adequate representative of the CLASS because her interests do not conflict
2 with the interests of the CLASS which Plaintiff seeks to represent. Plaintiff will
3 fairly, adequately, and vigorously represent and protect the interests of the
4 CLASS and has no interests antagonistic to the CLASS. Plaintiff has retained
5 counsel who is competent and experienced in the prosecution of class action
6 litigation.

7 26. Superiority (Fed. R. Civ. P. 23(b)(1) and 23(b)(3)): A class action
8 is superior to other available means for the fair and efficient adjudication of the
9 claims of the CLASS. While the aggregate damages which may be and if
10 awarded to the CLASS are likely to be substantial, the actual damages suffered
11 by individual members of the CLASS are relatively small. As a result, the
12 expense and burden of individual litigation makes it economically infeasible and
13 procedurally impracticable for each member of the CLASS to individually seek
14 redress for the wrongs done to them. Plaintiff does not know of any other
15 litigation already commenced by or against any member of the CLASS
16 concerning Defendants' printing of more than the last 5 digits of the card number
17 and/or the expiration date of the card on customer receipts. The likelihood of
18 individual CLASS members prosecuting separate claims is remote.
19 Individualized litigation would also present the potential for varying, inconsistent
20 or contradictory judgments, and would increase the delay and expense to all
21 parties and the court system resulting from multiple trials of the same factual
22 issues. In contrast, the conduct of this matter as a class action presents fewer
23 management difficulties, conserves the resources of the parties and the court
24 system, and would protect the rights of each member of the CLASS. Plaintiff
25 knows of no difficulty to be encountered in the management of this action that
26 would preclude its maintenance as a class action.

FIRST CAUSE OF ACTION

For Violation of 15 U.S.C. §§ 1681 *et seq.*

(On Behalf of Plaintiff and the CLASS

as against all Defendants including DOES 1 through 100)

27. Plaintiff hereby incorporates by reference the allegations contained in this Complaint.

28. Plaintiff asserts this claim on behalf of herself and the CLASS against Defendants and each of them.

29. Title 15 U.S.C. § 1681c(g)(1) provides that:

"**no person** that accepts credit cards or debit cards for the transaction of business **shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder** at the point of the sale or transaction."

30. By its express terms, 15 U.S.C. § 1681c(g)(1) applies to "any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions" after December 3, 2006 (15 U.S.C. § 1681c(g)(3)).

31. Defendants transact business in the United States and accept credit cards and or debit cards in the course of transacting business with persons such as Plaintiff and members of the CLASS. In transacting such business, Defendants use cash registers and or other machines or devices that electronically print receipts for credit card and/or debit card transactions.

32. After December 3, 2006, and within two years from the date of filing this action, Defendants, at the point of a sale or transaction with Plaintiff CIRENA TORRES, provided Plaintiff CIRENA TORRES with one or more electronically printed receipts on each of which Defendants printed more than the last 5 digits of her credit card or debit card number, the expiration date of her

1 credit card or debit card, the brand of the card (i.e., Visa, etc.), and Plaintiff's
2 name.

3 33. After December 3, 2006, and within two years from the date of filing
4 this action, Defendants, at the point of a sale or transaction with members of the
5 CLASS, provided each member of the CLASS with one or more electronically
6 printed receipts on each of which Defendants printed, for each respective CLASS
7 member, more than the last 5 digits of the credit card or debit card number, the
8 expiration date of the credit card or debit card, the brand of the card (i.e., Visa,
9 etc.), and the cardholder's name.

10 34. As set forth above, FACTA was enacted in 2003 and gave merchants
11 who accept credit and or debit cards up to three years to comply with its
12 requirements, requiring full compliance with its provisions no later than
13 December 4, 2006.

14 35. Defendants and each of them knew of and were well informed about
15 the law, including specifically FACTA's requirements concerning the truncation
16 of credit and debit card numbers and prohibition on the printing of expiration
17 dates.

18 36. For example, but without limitation, several years ago, VISA,
19 MasterCard, the PCI Security Standards Council (a consortium founded by VISA,
20 MasterCard, Discover, American Express and JCB), companies that sell cash
21 register and other devices for the processing of credit or debit card payments,
22 companies that sell software to operate payment card devices, companies that
23 maintain and repair hardware or software used to process payment card
24 transactions, and other entities informed Defendants and each of them about
25 FACTA, including its specific requirements concerning the truncation of credit
26 and debit card numbers and prohibition on the printing of expiration dates, and
27 Defendants' need to comply with same.

28

1 37. Other entities, including but not limited to Defendants' merchant
2 bank (also known as the acquiring bank or acquirer) which processes credit and
3 debit card payments for transactions occurring at Defendants' store(s), likewise
4 informed Defendants and each of them about FACTA, including its specific
5 requirements concerning the truncation of credit and debit card numbers and
6 prohibition on the printing of expiration dates, and Defendants' need to comply
7 with same.

8 38. In addition, many companies such as VISA and MasterCard devised
9 and implemented policies well before the operative date of FACTA's
10 requirements, wherein such policies VISA, MasterCard and others required
11 Defendants (and informed Defendants of the requirements) to truncate credit and
12 debit card numbers and prevent the printing of expiration dates on receipts. In
13 addition, these companies also publically announced some of these requirements.
14 For example, on March 6, 2003, VISA USA's CEO, Carl Pascarella, held a press
15 conference on Capitol Hill with Senators Dianne Feinstein, Judd Gregg, Jon
16 Corzine and Patrick Leahy, and publically announced Visa USA's new truncation
17 policy to protect consumers from identity theft. At the March 2003 press
18 conference, Mr. Pascarella explained, as follows:

19 "Today, I am proud to announce an additional measure to
20 combat identity theft and protect consumers. **Our new receipt**
21 **truncation policy will soon limit cardholder information on**
22 **receipts to the last four digits of their accounts. The card's**
23 **expiration date will be eliminated from receipts altogether.** This
24 is an added security measure for consumers that doesn't require any
25 action by the cardholder. We are proud to be the first payments
26 brand to announce such a move to protect cardholders' identities by
27 restricting access to their account information on receipts.
28

1 **The first phase of this new policy goes into effect July 1,**
2 **2003 for all new terminals.** I would like to add, however, that even
3 before this policy goes into effect, **many merchants have already**
4 **voluntarily begun truncating receipts, thanks to groundwork**
5 **that we began together several years ago.**

6 Receipt truncation is good news for consumers, and bad news
7 for identity thieves. Identity thieves thrive on discarded receipts and
8 documents containing consumers' information such as payment
9 account numbers, addresses, Social Security numbers, and more.
10 Visa's new policy will protect consumers by limiting the information
11 these thieves can access.” (Statements made by VISA USA’s CEO,
12 Carl Pascarella at a March 6, 2003 press conference held at Capitol
13 Hill with Senators Dianne Feinstein, Judd Gregg, Jon Corzine and
14 Patrick Leahy.)

15 39. Moreover, the Government, through the Federal Trade Commission
16 (“FTC”), provided notice to businesses on no less than three separate occasions
17 in 2007 reminding them of the requirement to truncate credit and debit card
18 information on receipts. Defendants were informed of and knew about these
19 notices from the FTC. In one such notice, entitled “FTC Business Alert” “Slip
20 Showing? Federal Law Requires All Businesses to Truncate Credit Card
21 Information on Receipts,” and dated May 2007, the FTC reminded businesses,
22 among other things, of the following:

23 “What’s on the credit and debit card receipts you give your
24 customers? The Federal Trade Commission (FTC), the nation’s
25 consumer protection agency, says it’s time for companies to check
26 their receipts and make sure they’re complying with a law that’s
27 been in effect for all businesses since December 1, 2006.

1 According to the federal Fair and Accurate Credit Transaction
 2 Act (FACTA), the electronically printed credit and debit card
 3 receipts you give your customers must shorten — or truncate — the
 4 account information. **You may include no more than the last five**
 5 **digits of the card number, and you must delete the card’s**
 6 **expiration date.** For example, a receipt that truncates the credit card
 7 number and deletes the expiration date could look like this:

8 ACCT:*****12345

9 EXP:****

10 Why is it important for businesses to make sure they’re
 11 complying with this law? Credit card numbers on sales receipts are
 12 a “golden ticket” for fraudsters and identity thieves. Savvy
 13 businesses appreciate the importance of protecting their customers
 14 — and themselves — from credit card crime.”

15 40. Despite knowing and being repeatedly informed about FACTA and
 16 the importance of truncating credit and debit card numbers and preventing the
 17 printing of expiration dates on receipts, and despite having had over three years
 18 to comply with FACTA’s requirements, Defendants and each of them knowingly
 19 willfully, intentionally, and recklessly violated FACTA’s requirements by, *inter*
 20 *alia*, printing more than the last 5 digits of the card number, the expiration date
 21 of the card, the brand of the card (i.e., Visa, etc.), and the name of the cardholder
 22 upon the receipts provided to the cardholders with whom they transact business.

23 41. Defendants’ business peers and competitors brought their credit and
 24 debit card receipt printing processes in compliance with FACTA’s requirements
 25 by, for example, doing things such as programming their card machines and
 26 devices to prevent them from printing more than the last five digits of the card
 27 number and or the expiration date upon the receipts provided to the cardholders.
 28

1 Defendants could have readily done the same.

2 42. Instead, Defendants knowingly, willfully, intentionally, and
3 recklessly disregarded FACTA's requirements and used cash registers and or
4 other machines or devices that printed receipts in violation of FACTA.

5 43. Defendants knowingly, willfully, intentionally, and recklessly
6 violated FACTA in conscious disregard of the rights of Plaintiff and the CLASS.

7 44. Defendants have also harmed Plaintiff and the CLASS by exposing
8 them to at least an increased risk of identity theft and credit and or debit card
9 fraud.

10 45. As a result of Defendants' willful violations of FACTA, Defendants
11 are liable to Plaintiff and each member of the CLASS in the statutory damage
12 amount of "not less than \$100 and not more than \$1,000" for each violation. (15
13 U.S.C. § 1681n.)

14
15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays for:

17 1. An order certifying the CLASS and appointing Plaintiff as the
18 representative of the CLASS, and appointing counsel of record for Plaintiff as
19 counsel for the CLASS;

20 2. An award to Plaintiff and the CLASS of statutory damages pursuant
21 to 15 U.S.C. § 1681n for Defendants' willful violations (up to but not exceeding
22 the fullest extent allowed under the Constitution of the United States);

23 3. An award to Plaintiff and the CLASS of punitive damages pursuant
24 to 15 U.S.C. § 1681n (up to but not exceeding the fullest extent allowed under
25 the Constitution of the United States);

26 4. Payment of costs of suit herein incurred pursuant to, *inter alia*, 15
27 U.S.C. § 1681n;

28

1 5. Payment of reasonable attorney's fees pursuant to, *inter alia*, 15
2 U.S.C. § 1681n; and

3 6. For such other and further relief as the Court may deem proper.
4

5 Date: December 29, 2014

By: /S/ Kenneth M. Roberts

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22 Counsel for Plaintiff
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² Counsel will comply with LR IA 10-2 within 45 days.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all claims so triable.

Date: December 29, 2014

By: /S/ Kenneth M. Roberts

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